

WRIT PETITION NO. 151 OF 2002.

Shri Tony Gomes,
r/o H. No. 574,
Chinchinim, Bandfall,
Salcete, Goa.

... Petitioner.

Versus

1. Mamlatdar of Salcete
and Revenue Recovery Officer,
Margao, Goa.
2. Enforcement Directorate,
Foreign Exchange Regulation Act,
Ministry of Finance, Shanta
Bldg., Flat No. 11/C, st. Inez,
Panaji, Goa.
3. Union of India, through
Ministry of Home,
New Delhi.

Mr. N. Sardessai, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. V.P.
Thali, Addl. Advocate General for the Respondent
No. 1.

Mr. J. Vaz, Addl. Central Govt. Standing Counsel for
the Respondents 2 and 3.

Coram: V.C. DAGA AND
P.V. HARDAS, JJ.

Date: 12th June 2002.

ORAL ORDER (PER DAGA, J.)

Heard learned counsel for the petitioner and
respondents. Perused record.

2. This petition is directed against the Order
dated 18th July 2000 (Exhibit 'C') passed by the
Assistant Director of Enforcement under Foreign
Exchange Regulation Act, 1973 and consequent Notice of
Demand dated 23rd July 2001 (Exhibit 'D') calling upon

the petitioner to pay Rs. 50,000/- by way of penalty imposed under the Order dated 18th July 2000 (Exhibit 'C' so as to effect recovery thereof.

3. The basic foundation of the petition is the impugned Order dated 18th July 2000 (Exhibit 'C'). It is needless to mention that this Order was an appealable order. Appeal lies with the Chairman, Foreign Exchange Regulation Appellate Board, Ministry of Law, New Delhi, after depositing the amount of penalty imposed as per the Order within 45 days from the date on which the Order is served. Period of appeal is 90 days. No appeal has been preferred by the petitioner. This petition appears to have been filed some time in the month of April 2002, that is, practically at the close of 2 years from the date of the Order. Since the Order is an appealable Order, in the absence of appeal, the Order has become final. Failure on the part of the petitioner to comply with the said Order by depositing the amount of penalty, he was treated as a defaulter and a Notice of Demand came to be issued for Rs. 50,000/- under Rule 5 of the Goa, Daman and Diu Realisation of Land Revenue Rules, 1968, under the signature of the Mamlatdar of Salcete.

4. Firstly the petition suffers from laches. It was expected of the petitioner to invoke the

jurisdiction of this Court within a reasonable time. What could be the reasonable time is to be decided in each case on the facts and circumstances of that particular case. While deciding this aspect of the matter the period of appeal is 90 days is to be borne in mind. It is well settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. The relief under Article 226 cannot be claimed as of right. If Article 226 is invoked "for any other purpose", it is discretionary power of the High Court to grant or to refuse such relief. One of the grounds for refusing relief under Article 226 is that the petitioner has been guilty of delay and laches. It is imperative, if the petitioner wants to invoke the extraordinary remedy available under Article 226 of the Constitution, that he should come to the Court at the earliest reasonably possible opportunity. The inordinate delay in making the motion for a writ will be an adequate ground for refusing to exercise the discretion. It is essential that persons who are aggrieved by any order of the Government or any executive action should approach the High Court with utmost expedition. In an appropriate case the High Court may not exercise its discretion and may refuse to grant relief if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other

circumstances, causing prejudice to the other party.

5. In **State of M.P. v. Nandlal**, reported in A.I.R. 1987 S.C. 251, a licence was granted in favour of the applicant to manufacture and sell country liquor. The said applicant/licensee acquired land, constructed buildings, purchased plants and machineries, spent considerable time, manpower and a huge amount for setting up the distilleries. When the petition was filed by a third party against grant of licence in favour of the applicant/licensee, while dismissing it on the ground of delay and laches, the following pertinent observations were made by the Supreme Court:

" It is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction."

In this case by no stretch of imagination it can be said that lapse of more than 20 months after the impugned Order could be a reasonable period for filing this petition.

6. Apart from the above, in the entire petition delay has not been explained anywhere. In this backdrop, this petition is liable to be dismissed on the ground of laches alone.

7. Secondly, we are not inclined to entertain this petition for one more reason. The petitioner did not exhaust the alternate remedy which was available to him by way of statutory appeal. The learned counsel for the petitioner sought to submit that the demand itself was made in the month of July 2001, as such, the petitioner was justified in invoking the jurisdiction of this Court in the month of April 2002, that is, after 10 months. It is needless to mention that the demand in question is nothing but a fall out of the Order dated 18th July 2000. In execution of this Order, this demand has been set up; otherwise impugned demand has no independent standing. Therefore, no exception can be taken to the notice of demand (Exhibit 'D') alone. The said notice of demand does not furnish independent cause of action for filing this petition. Thus, delayed filing of this petition cannot be ignored for want of proper explanation.

8. The learned counsel for the petitioner has submitted that the alternate remedy is onerous. No appeal can be filed unless the amount of penalty is

deposited with the Appellate Authority. Therefore, in his submission the remedy of appeal could not be said to be alternate remedy. He placed reliance on the Judgments of the Apex Court in **Himmatlal Harilal Mehta v. State of Madhya Pradesh and others**, reported in A.I.R. 1954 S.C. 403 and in **M.G. Abrol, Additional Collector of Customs, Bombay and another v. M/s. Shantilal Chhotelal and Co.**, reported in A.I.R. 1966 S.C. 197.

9. In economic matters, the Supreme Court has taken a view that the High Court should not convert itself into an original authority or an appellate authority in such matters while exercising its jurisdiction under Article 226 of the Constitution and the aggrieved party has to avail of an alternative remedy provided under the statute. When the statute provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed by the authorities, the aggrieved person had to resort to the statutory remedies. He cannot be allowed to invoke the jurisdiction of the High Court under Article 226 of the Constitution. Resort to the High Court in exercise of its extraordinary jurisdiction in matters relating to assessment, levy and collection of tax or fine may be permitted only when questions of infringement of

fundamental rights arise, or where on undisputed facts exist or the taxing authorities are shown to have assumed jurisdiction which they do not possess. The High Court can interfere where the action is being taken under an invalid law, arbitrarily or without the sanction of law. However, in attempting to bypass the provisions of the taxing statutes by inviting the High Court to decide questions which are primarily within the jurisdiction of Revenue Authorities, the party approaching the Court has often to ask the Court to make assumptions of facts which remain to be investigated by the Revenue Authorities. The mere fact that an assessee has to deposit the amount of tax while filing an appeal cannot be said to be a good ground to bypass the remedy provided under the Act. The Apex Court had occasion to deal with similar situation in the case of **Sales Tax Officer, Jodhpur and another v. M/s. Shiv Ratan G. Mohatta**, reported in A.I.R. 1966 S.c. 142, wherein the Apex Court observed as under:-

"11. We are of the opinion that the High Court should have declined to entertain the petition. No exceptional circumstances exist in this case to warrant the exercise of the extraordinary jurisdiction under Art. 226. It was not the object of Art. 226 to convert High Courts into original or appellate assessing authorities whenever an assessee chose to attack an assessment order on the ground that a sale was made in the course of import and, therefore, exempt from tax. It was urged on behalf of the assessee that

they would have had to deposit sales tax, while filing an appeal. Even if this is so, does this mean that in every case in which the assessee has to deposit sales tax, he can bypass the remedies provided by the Sales Tax Act? Surely not. There must be something more in a case to warrant the entertainment of a petition under Art. 226, something going to the root of the jurisdiction of the Sales Tax Officer, something to show that it would be a case of palpable injustice to the assessee to force him to adopt the remedies provided by the Act."

10. The learned counsel appearing for the petitioner in order to show something more tried to press into service the alleged breach of fundamental right. The said argument is to be referred to only for rejection. In the petition there is no challenge to the legislation in question. If the legislation is valid, the consequences flowing from breach thereof cannot be allowed to be challenged on the ground of breach of fundamental right. The facts of this case would reveal that the petitioner suffered an adverse Order under the provisions of Foreign Exchange Regulation Act, 1973, the validity of which is not the subject matter of challenge. The implementation of that Order cannot be said to be an inroad on the fundamental right of the petitioner. No case is made out for the alleged breach of the fundamental right.

11. Lastly, the petitioner made a desperate attempt to challenge the Notice of Demand on the ground

that the notice has been issued by the Mamlatdar and not the Talathi. This submission has no force. If an Officer higher than a Talathi has issued the notice, no fault can be found with the Notice issued by the Mamlatdar.

12. In view of this matter, no interference is called for by this Court and the petition is liable to be dismissed on the ground of delay and laches. In the result the petition is dismissed in limine with no order as to costs.

V.C. DAGA, J.

P.V. HARDAS, J.

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